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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Secretary-General

1. In its resolution 1996/30 of 19 April 1996, entitled "Question of enforced disappearances", the Commission on Human Rights reiterated its invitation to States to consider taking effective measures including, if appropriate, legislative measures, to implement the principles of the Declaration on the Protection of All Persons from Enforced Disappearance, and to take action to that end at the national and regional levels and in cooperation with the United Nations. It also encouraged States to provide concrete information on measures taken to give effect to the Declaration, as well as obstacles encountered. In conclusion, the Commission requested the Secretary-General to keep it informed of the steps he takes for the widespread dissemination and promotion of the Declaration and to compile observations, if any, from Governments on the possible measures they have taken, where appropriate, to take the Declaration into account.

2. In conformity with Commission resolution 1996/30, the Department of Public Information (DPI) has distributed Fact Sheet No.6 concerning enforced or involuntary disappearances, published by the Centre for Human Rights, which contains the full text of the Declaration. It is also in the process of publishing a booklet on the Declaration which is to be distributed to,

among others, United Nations peace-keeping offices and specialized agencies. In addition, the DPI Visitors' Services Section makes the Declaration available to the general public and educational institutes upon request. The text of the Declaration is also available on the Internet under the section on General Assembly resolutions. The Department's Development and Human Rights Section also distributes copies of the Declaration upon request.

3. In the field, United Nations Information Centres and Services and United Nations offices are provided with copies of publications containing the Declaration, which they keep in their reference libraries for consultation by interested students, researchers and academics. They also distribute copies to the media and to non-governmental organizations and at special events such as the annual celebration of Human Rights Day.

4. For the remainder of the current biennium, the DPI plans to issue a special backgrounder on the question of enforced disappearances. Every opportunity will be used to promote the elements of the Declaration in briefings and events dealing with the United Nations and human rights, both at Headquarters and through United Nations information centres and services.

5. Human rights field offices have also actively distributed the Declaration to local non-governmental organizations and other interested parties. The Declaration is also part of the training projects on the administration of justice that are being developed in the framework of the human rights advisory services, technical assistance and information programme.

6. In implementation of resolution 1996/30, on 7 June 1996 the Secretary-General sent a note verbale to the Governments of all Member States drawing their attention to the provisions of this resolution and requesting them to provide information on the measures they had taken to take the Declaration into account.

7. At the time of preparation of the present report, replies had been received from the Governments of Croatia, Guyana, the Philippines and the United Kingdom of Great Britain and Northern Ireland.

8. The Government of Croatia stated that the implementation of the Declaration was one of the priorities of the Government, and to that end, a number of legislative and administrative measures had been taken at the national level. However, for the Republic of Croatia the main problem concerning enforced disappearances remained the tracing of persons missing as a result of the armed conflict whose fate was still not known. In order to clarify the fate of those persons, the Government had established the Government Commission on Detained and Missing Persons, which had undertaken numerous measures at both the national and international levels, resulting in the clarification of the fate of a total of 7,496 persons. In addition, the Government was cooperating with the special process on missing persons in the Territory of the Former Yugoslavia, the International Committee of the Red Cross and others in an effort to determine the fate of those persons who remained missing.

9. The Government of Guyana stated that there were no known cases of enforced disappearance in Guyana. The Constitution provided for the

protection of the right to life and liberty, and the Criminal Law Act, Chapter 8:01 provided for the protection of women and children against abduction or kidnapping. The Government further noted that some potential witnesses, especially in drug related cases, were afraid to give evidence because of threats from the accused or persons connected to the accused. In that regard, the Government stressed the need for a witness protection programme. The Government stated that it had taken appropriate action to ensure compliance with the Declaration.

10. The Government of the Philippines stated that under Republic Act No. 7659, entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes", kidnapping and serious illegal detention were listed among the heinous crimes to which the penalty of death was to be applied when the victims were killed or raped or died as a consequence of their detention. Under resolution No. A83-046 of the Philippine Commission on Human Rights, the Commission was authorized to grant financial assistance to qualified victims of human rights violations, in the form of temporary relief, not compensation. Coordination was being strengthened between the Department of Justice and the Philippine Commission on Human Rights on the documentation and identification of cases of disappearance under preliminary investigation, including cases of harassment, ill-treatment and the intimidation of witnesses or relatives of disappeared persons. Coordination was also being strengthened between the Department of Justice and law-enforcement agencies in the prosecution of perpetrators of enforced disappearances, and representatives of the Department of Justice were contributing to congressional hearings on the drafting of bills for the prevention and elimination of enforced disappearance. The National Police Commission had established the Office for Missing Persons, which would handle public assistance activities regarding enforced disappearances. Efforts were under way to promote human rights at the village level through the implementation of the national human rights advocacy programme and the creation of human rights action centres in the villages.

11. The Government of the United Kingdom of Great Britain and Northern Ireland reported that to date it had received no allegations of enforced disappearance, but it would take swift and appropriate action to deal with any instances of enforced disappearance that came to light. The United Kingdom had comprehensive legal safeguards to prevent such an occurrence. To that end, extensive details were provided on the protection provided for individuals in police and prison custody, and of other relevant provisions in the criminal justice system, inter alia, concerning the right of any detainee to have someone informed of his arrest, to speak to a solicitor and to have independent legal advice free of charge. Exercise of those rights might be delayed in connection with a serious arrestable offence, but the delay in notification of arrest must not exceed 36 hours from the time of arrival at the police station or 48 hours in the case of suspects held under the Prevention of Terrorism Act 1989. Prisoners were allowed to make two phone calls, to write to whomsoever they wished and would be interviewed within 24 hours by the prison governor, the prison chaplain and a probation officer. Prisoners have the right to make an application for habeas corpus.



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Note by the Secretary-General

1. At its forty-eighth session, the Sub-Commission, in its resolution 1996/28 of 29 August 1996, decided to transmit the revised draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by the former Special Rapporteur of the Sub-Commission, Mr. Theo van Boven (E/CN.4/Sub.2/1996/17), to the Commission on Human Rights for its consideration together with the comments of the sessional working group of the Sub-Commission on the administration of justice and the question of compensation (E/CN.4/Sub.2/1996/16, paras. 10-32), and the comments of the Sub-Commission during its forty-eighth session (see E/CN.4/Sub.2/1996/SR.25-29 and 35).
2. The Sub-Commission also requested Mr. van Boven to prepare, without financial implications, a note taking into account the comments and observations of the working group and the Sub-Commission referred to above, in order to facilitate the examination by the Commission on Human Rights of the draft revised basic principles and guidelines.
3. In pursuance of this resolution, the Secretary-General is transmitting to the Commission on Human Rights the revised draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven (E/CN.4/Sub.2/1996/17) and the report of the sessional working group of the Sub-Commission on the administration of justice and the question of compensation (E/CN.4/Sub.2/1996/16).
4. The note prepared by Mr. van Boven is contained in the annex to the present document.

Annex

Note prepared by the former Special Rapporteur of the Sub-Commission,
Mr. Theo van Boven, in accordance with paragraph 2 of Sub-Commission
resolution 1996/28

[13 January 1997]

1. The former Special Rapporteur carefully examined the comments and observations made by members of the sessional working group of the Sub-Commission on the administration of justice and the question of compensation and by other participants in these proceedings, as reflected in the report of the working group (E/CN.4/Sub.2/1996/16, paras. 10-32), as well as a number of suggestions he received from individual members of the Sub-Commission. On that basis he has reviewed the draft revised basic principles and guidelines he previously submitted to the Sub-Commission (E/CN.4/Sub.2/1996/17).
2. As a result, with a view to facilitate the work of the Commission on Human Rights, the former Special Rapporteur now submits in the appendix hereto the draft revised basic principles and guidelines in a partly adapted version. Wherever wording is suggested as additions to or changes of the revised basic principles and guidelines, such wording is presented in italics. Where wording is put in square brackets, the former Special Rapporteur suggests that such wording be deleted. He hopes that this method will serve a helpful purpose and he is confident that the Commission on Human Rights will be able to deal fruitfully and expeditiously with this important matter.

Appendix

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO REPARATION FOR VICTIMS OF [GROSS] VIOLATIONS OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

The duty to respect and to ensure respect for human rights and international humanitarian law

1. Under international law every State has the duty to respect and to ensure respect for human rights and international humanitarian law.

Scope of the obligation to respect and to ensure respect for human rights and international humanitarian law

2. The obligation to respect and to ensure respect for human rights and international humanitarian law includes the duty: to prevent violations, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to victims. Particular attention must be paid to the prevention of gross violations of human rights and international humanitarian law and to the duty to prosecute and punish perpetrators of crimes under international law.

Applicable norms

3. The human rights and humanitarian norms which every State has the duty to respect and to ensure respect for, are defined by international law and must be incorporated and in any event made effective in national law. In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection will be made applicable.

Right to a remedy

4. Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her human rights have been violated. The right to a remedy against violations of human rights and humanitarian norms includes the right to access to national and any available international procedures for their protection.

5. The legal system of every State shall provide for prompt and effective disciplinary, administrative, civil and criminal procedures so as to ensure readily accessible and adequate redress, and protection from intimidation and retaliation.

Every State shall provide for universal jurisdiction over gross violations of human rights and international humanitarian law which constitute crimes under international law.

Reparation

6. Reparation may be claimed individually and where appropriate collectively, by the direct victims of violations of human rights and international humanitarian law, the immediate family, dependants or other persons or groups of persons closely connected with the direct victims.

7. [In accordance with international law,] States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8. Every State shall make known, through public and private mechanisms, [both at home and where necessary abroad,] the available procedures for reparations.

9. Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights or international humanitarian law. Civil claims relating to reparations for gross violations of human rights and international humanitarian law shall not be subject to statutes of limitations.

10. Every State shall make readily available to competent authorities all information in its possession relevant to the determination of claims for reparation.

11. Decisions relating to reparations for victims of violations of human rights or international humanitarian law shall be implemented in a diligent and prompt manner.

Forms of reparation

Reparations, to be provided in accordance with the law of every State, may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires, inter alia, restoration of liberty, family life, citizenship, return to one's place of residence, and restoration of employment or property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights or international humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance, medicines and medical services.

14. Rehabilitation shall be provided and will include medical and psychological care as well as legal and social services.

15. Satisfaction and guarantees of non-repetition shall be provided, including, as necessary:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth;
- (c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons closely connected with the victim;
- (d) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (e) Judicial or administrative sanctions against persons responsible for the violations;
- (f) Commemorations and paying tribute to the victims;
- (g) Inclusion in human rights training and in history or school textbooks of an accurate account of the violations committed in the field of human rights and international humanitarian law;
- (h) Preventing the recurrence of violations by such means as:
 - (i) Ensuring effective civilian control of military and security forces;
 - (ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
 - (iii) Strengthening the independence of the judiciary;
 - (iv) Protecting persons in the legal profession and human rights defenders;
 - (v) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials.

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